



Policy Statements

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Policy on Intellectual Property

Adopted by the Board of Trustees on October 12, 2001

I. INTRODUCTION

Lehigh University faculty, staff, and student personnel are regularly involved in a wide range of scholarly activities that stem from the core teaching, learning, research, and service missions of the University. While the primary focus of such efforts is the advancement of the central purposes of the University, the products of scholarship often have implications for wider and differing applications. These products or intellectual properties thus may be of benefit to the individuals involved, to the University, and to the larger society in which we live. By establishing policy on Intellectual Property, Lehigh University seeks to support faculty, staff, and students in identifying, protecting, and administering Intellectual Property matters and defining the rights and responsibilities of all involved. In doing so, it intends to promote the following goals:

- To sustain a University environment that encourages learning and the generation of new knowledge by faculty, staff, and students.
- To motivate the development and dissemination of intellectual property by providing appropriate financial rewards, flexible arrangements, and assistance to the creator (an individual or team throughout this document) and to the University.
- To facilitate wide transfer of useful Intellectual Property to society for public benefit.

Intellectual Property is the ownership and associated legal rights of creations, which are developed or guided chiefly by the intellect of their creators and which are in tangibles or intangibles. In particular, Intellectual Property is created when something new has been conceived and developed or when a non-obvious result, which can be applied to some useful purpose, has been discovered using existing knowledge.

The purpose of this document is to provide the overarching policy framework under which Lehigh University will manage the Intellectual Property resources of the University community consistent with Lehigh's mission. This policy statement

does not and should not provide all the necessary specific details required to administer successful Intellectual Property for the entire University. Rather, the Board of Trustees in approving this policy statement delegates the implementation and administration of this policy along with the development of appropriate and necessary processes to the President of the University.

This policy shall apply to all persons in the employ of Lehigh University in any capacity and to all students enrolled in Lehigh University. Furthermore, this policy applies to all Intellectual Property created by Lehigh University employees and students.

II. OWNERSHIP

The broad principles governing ownership of all Intellectual Property created by all persons in the employ of Lehigh University in any capacity and to all students enrolled in Lehigh University are specified in this section. Ownership is the critical issue for the dissemination of Intellectual Property and the distribution of rewards from it. This section is, therefore, the key portion of the entire policy and the subsequent sections are subordinate to it.

The ownership principles established in this section are intended to help the Lehigh community take maximum advantage of new opportunities to create Intellectual Property using recent technological advances especially digital ones. In this spirit the University welcomes opportunities to create external and internal partnerships. The ownership principles provide constructive opportunities for forming such partnerships to the benefit of Lehigh faculty, staff and students as well as the University. They also permit the development of specific operating procedures based on the University's experience in specific cases and situations.

The application of these ownership principles shall be consistent with the use of University resources, shall always protect its legal status as a nonprofit institution, and shall never violate any laws of the United States or the Commonwealth of Pennsylvania.

The ownership principles are focused on the way the property is created not on the nature of the property and are presented in a hierarchal structure to make the order of precedence among them clear. Specifically, when one of them applies to an Intellectual Property matter, the higher numbered ones are not applicable to that specific matter. It follows from the last principle of ownership that the University is the default owner of Intellectual Property not covered by the others. In order of precedence, ownership of Intellectual Property shall be specified as follows:

1. Sponsored Project Agreements: The University may negotiate and sign Sponsored Project Agreements including contracts and grants between external sponsors such as a corporations, government agencies or foundations and the

University that specify completely or partially the ownership of Intellectual Property created as a result of specific sponsored projects. This category includes ownership requirements that result from a government funding source by operation of law (e.g., laws pertaining to Intellectual Property created using federal funds.). All individuals working on a project under such a Sponsored Project Agreement shall be notified in advance of the terms of ownership in said agreement for any Intellectual property they may create working on the project. Although most sponsored project agreements would be for funded research projects, they should be available for other kinds of work including pro bono projects.

2. Individual Project Agreements: The University may negotiate and sign Individual Project Agreements between the University and an individual member (s) of the faculty, staff or students that specify completely or partially the ownership of Intellectual Property created as a result of work conducted on a specific project. Individual Project Agreements by the University and potential creators are encouraged especially in situations that lack precedent and do not naturally fit into standard Intellectual Property practices.

3. University Sponsored Projects: The University may initiate and fund specific projects that produce Intellectual Property and shall own the Intellectual Property created as a result of such projects. Whether or not a project should be undertaken as a University Sponsored Project shall be determined by the purpose of the work and not the form of the Intellectual Property to be created. In particular, the University shall own Intellectual Property created by University employees and students who were assigned or employed specifically to produce (work-for-hire) a particular piece of Intellectual Property. The financial terms or other terms of support for University Sponsored Projects can vary from project to project as long as the participants are properly informed of the terms of the agreement for the project before they begin work on it.

4. Traditional Academic Rights: In keeping with academic traditions at the University, the creator shall retain ownership to the following types of Intellectual Property, without limitation unless part of an agreement under the above principles of ownership: books (fiction, nonfiction, poetry, textbooks etc.), articles, poems, published standardized tests, student papers (themes, term papers, reports, exams, etc.) musical works, dramatic works including any accompanying music, pantomimes and choreographic works, pictorial, graphic and sculptural works, motion pictures, video recordings, and sound recordings. This provision does not automatically include computer software, databases, and other electronic media because no academic tradition exists for them. Until standard practices emerge creators of any innovative Intellectual Property are encouraged to pursue Individual Project Agreements with the University.

In all cases the student shall own the copyright to his/her doctoral dissertation. Consequently dissertation advisors must take responsibility to ensure that the

contents of dissertations do not fall under Intellectual Property agreements precluding the student owning the copyright to any portion of a doctoral dissertation. Intellectual Property, other than the copyright of the doctoral dissertation, created doing research toward a doctoral degree is subject to all the other terms of this policy.

5. Consulting Agreements: Intellectual Property created by Lehigh personnel who are consulting with external entities (corporations, businesses, government agencies, foundations, etc.) without making essential use of University funds, resources or facilities and while abiding by University policies on consulting is presumed retained by the external entity or the individuals as specified by the terms of the consulting agreement. Student employment with external entities will be considered as consulting under this policy, and externally employed students will be responsible for respecting the Intellectual Property policies of both Lehigh and their employers.

6. Independent Projects: Any Intellectual Property created by a University employee that is not part of its creator's employment responsibilities and that is developed on his/her own time without making essential use of University funds, resources or facilities shall be owned by the creator.

When a student creates Intellectual Property independently, using only resources available in common to all students such Intellectual Property is owned by the student. However, Intellectual Property created by a student(s) when working for pay or academic credit, or voluntarily working on faculty projects or University Sponsored Projects is subject to the other six ownership principles.

7. Other Intellectual Property Generated by University Activities: University personnel and/or students frequently produce Intellectual Property from their work within the scope of the mission of the University that is not covered by the above ownership principles. The University shall be the owner of Intellectual Property, when its ownership is not governed by any of the previous items and when said Intellectual Property was created within the normal scope of employment and/or study or a direct result thereof, and shall share any revenues from it as prescribed in item 7 of III. The creator of any Intellectual Property that is or might be owned by the University under this policy is required to make reasonably prompt written disclosure of the work to the University. Depending on the nature of this Intellectual Property, it may be subject to patent or copyright policies.

III. OPERATING PRINCIPLES

This section identifies a set of foundational principles to provide the operating guidelines for the University's management of Intellectual Property. They focus on the rights and responsibilities of both individuals and the University as an institution.

1. Administrative Office: An enterprising office that actively assists faculty, staff and students in converting their creations into marketable products and aggressively markets University owned Intellectual Property is essential. Until otherwise designated by the President, the Office of Research and Sponsored Programs shall be the primary office responsible for the administration of University owned Intellectual Property including patents, copyrights, licensing, commercialization, distributions from Intellectual Property, Sponsored Project Agreements, Individual Project Agreements, etc. Moreover, it shall be responsible for the effective marketing of University owned Intellectual Property.
2. Disclosure of Intellectual Property: The creator of any Intellectual Property that is or might be owned by the University under this policy is required to make reasonably prompt written disclosure of the work to the University, and to execute any documents deemed necessary to perfect legal rights in the University and to enable the University to file patent applications and applications for copyright registration when appropriate.
3. Intellectual Property Review Board: The Vice President for Academic Affairs shall appoint a representative Intellectual Property Review Board chaired by the Vice Provost for Research to advise on the interpretation, implementation, and administration of University Intellectual Property policies, development of procedures and the resolution of disputes.
4. Dispute resolution: Any dispute involving the creator, a department, a college or an Intellectual Property support office that cannot be settled through informal discussion shall be submitted to the Intellectual Property Review Board. The Intellectual Property Review Board will investigate the dispute and make a recommendation for resolution to the Vice President for Academic Affairs, who will make a final determination.
5. Protection of Intellectual Property: Whenever legal protection for Intellectual Property is anticipated, and independent of the ownership of it, all persons engaged in such creative activity should keep regular written records and maintain appropriate confidentiality. The creator should take precautions to assure the confidentiality and physical security of formulas, methods, processes, patterns, computer code, devices, compositions of matter, or other tangible research property.
6. Publication of Results: The right of employees and students to publish the results of research remains inviolate subject only to the terms of applicable agreements. However, while legal protection of a specific piece of Intellectual Property that is or might be owned by the University is being actively considered, the creator shall not publish or disclose said Intellectual Property in a non-confidential manner without the University's approval. The University is obligated to make decisions concerning patents, copyrights, and other matters affecting the legal protection and commercialization of Intellectual Property in a timely manner.

7. Distribution of Revenues: All revenues derived from University-owned Intellectual Property or creative works including electronic media will be received and administered by the Office of Research and Sponsored Programs. For each specific piece of Intellectual Property owned by the University, costs incurred in the process of perfecting, transferring, and protecting University rights to the property paid by the University will first be deducted from the gross income available before distribution. An accurate accounting of all such costs shall be made available to the creator upon request. The distribution of net proceeds (income less all costs including that of an agency engaged to provide patent administration services) that is received from University-owned Intellectual Properties shall be shared equally between the creator and the University unless there has been a prior agreement to do otherwise. The University and/or creator may, in appropriate circumstances, take equity positions in companies licensed to market or use Intellectual Property.

8. Public Dedication: Except when limited by the provisions for ownership in the previous section, the creator of any Intellectual Property that is owned by the University may petition the Office of Research and Sponsored Programs to place his/her creation in the public domain. The creator and the University must ascertain that the right to public dedication of that Intellectual Property is not limited by any external or internal agreement, University sponsorship arrangement, or terms of employment. Moreover, it is also the creator's responsibility to ensure that disclosure does not include valuable Intellectual Property owned by others.

9. University Trademarks: Lehigh University owns all trademarks and service marks related to goods and services distributed by the University. Lehigh University's licensing and trademark program shall protect and control all uses of Lehigh's various trademarks throughout the world.

In order to comply with and assure protection under federal trademark law, Lehigh is required to monitor all uses of its identifying marks and to communicate guidelines for their use. These guidelines apply not only to students, faculty, and staff, but also to recognized and non-recognized student organizations, academic departments, administrative divisions/departments, individuals, clubs, informal groups and ad hoc groups.

Identifying marks include, but are not limited to: the words Lehigh University, the official seal of the university, the Lehigh University word mark and accompanying design, and all future trademarks, service marks and logos used by Lehigh.

The Trademark Licensing Office must approve in writing the use of any Lehigh University mark on any printed, electronic materials, imprinted or embroidered items prior to production of each item.

Faculty, staff, and students may use the Lehigh name to identify themselves

(e.g., "Jane Doe, Professor of Economics, Lehigh University"). In using or authorizing use of the Lehigh name to identify themselves in connection with activities conducted with outside individuals and entities, faculty and staff members should assure that the Lehigh name is used in a manner that does not imply university endorsement or responsibility for the particular activity, product, or publication involved.

Students are permitted to use the name of a college or unit only with the approval of the responsible official of each college or unit.

10. Comprehensive Operating Procedures: The implementation of this overarching policy on Intellectual Property shall make use of subsidiary policies, operating procedures, and guidelines for specific types of Intellectual Property as appropriate. All such documents shall be consistent with this overarching policy and subject to the review of appropriate faculty committees and the Intellectual Property Review Board and to the approval of the President. Collectively these documents should form a comprehensive operating policy for Intellectual Property.

11. Glossary of Terms: The Office of Research and Sponsored Programs will maintain a glossary of terms used in this policy statement and the administration of it.

IV. PATENTS

Patents are legal instruments requiring special attention since they are utilized to protect and preserve the Intellectual Property rights of the creator and the University and to facilitate the transfer of Intellectual Property for commercialization and public benefit. This part addresses additional basic policy requirements for University-owned Intellectual Property that might be patented as an invention. It assumes University ownership has been determined by the criteria in Section II. Ownership and adds to the policy on Operating Principles in Section III.

A patent is a grant by the government, acting through the Patent Office, of exclusive right to an invention or discovery of a process, machine, manufacture or composition of matter for a limited time. Generally three conditions should be met for the granting of a patent: the invention or discovery should be new, useful, and unobvious.

The University has successfully obtained patents for a wide range of faculty and staff inventions and encourages the pursuit of new inventions by faculty and staff. This policy continues the current operating policy for patents within the context of an overarching Intellectual Property Policy. The following apply specifically to patents:

A. Disclosure, Assignment and Protection: Patents require specific actions to

provide legal protection for Intellectual Property while being evaluated for patenting as an Invention. All persons subject to this policy are obligated to disclose their Inventions in the prescribed form to the Office of Research and Sponsored Programs and to execute assignments and other appropriate documents as may be requested by the Office of Research and Sponsored Programs.

B. Patent Evaluation: The Office of Research and Sponsored Programs shall make a determination whether the University should seek patent protection for an invention. No creator shall have a right to have an invention patented by the University without the University's consent. If the University decides not to seek patent protection for an invention, ownership of the invention shall be reassigned to the creator upon request, subject to any sponsor restrictions.

C. Licensing and Commercialization: Agreements with outside entities that grant them rights to commercially develop Inventions are encouraged. The Office of Research and Sponsored Programs is responsible for negotiating patent licenses or other contractual arrangements, on behalf of the University, and in close coordination with the creator. Inventors shall, whenever practicable, be advised and consulted on the progress of license negotiations, but in no event shall they have a right of approval to the legal or payment terms of any agreement.

V. COPYRIGHTS

The University encourages the preparation and publication of copyrightable works that result from teaching, research, scholarly work, and artistic endeavors by members of the faculty, staff and student body. Because the sharing of knowledge is central to the success of the University, the University also desires that copyright policies enhance, not inhibit, cooperative productive work.

Copyright protection never extends to any idea, procedure, process, system, concept, principle or discovery. A copyright protects the forms of expression and not the ideas that are expressed. For example, the University might own the copyright to media prepared specifically for the delivery of a University credit-bearing course as Intellectual Property produced as part of a University Sponsored Project. The faculty member(s) who created the content could also copyright another non-derivative work based on the same ideas. Thus the faculty and University are afforded the opportunity to work together to copyright different expressions of the same ideas for different purposes.

The University does not claim ownership to a wide range of traditional types of copyrightable works as stated in item 4 (Traditional Academic Rights) of Section II on Ownership. However, the influence of new technologies on teaching, learning, research, and creative activity will continue and their impact on higher education and copyright law is difficult to predict. Consequently, Individual Project Agreements can be particularly useful in the copyright arena for the short term and collectively provide a basis for more comprehensive stable policies in

the long term.

Subordinate to the principles of ownership and operation in Section II and III, the following items apply to copyrights only:

A. Electronic Courses: When a department or college decides to offer an entire course or program by electronic means (satellite, streaming video, web based text, CD Rom, etc.) for distribution to students on or off campus, it shall normally be undertaken as a University Sponsored Project with the University owning the copyright to the electronic media used to deliver it.

B. Electronic course materials: Individual faculty members shall be free to use electronic media to enhance the instruction in their classes as they think best without any loss of ownership of Intellectual Property to which they would normally be entitled.

C. Teaching Materials: Creators of reusable teaching and classroom materials for Lehigh courses, such as curriculum guides, problem sets, exercise solutions, laboratory manuals etc., shall own these materials unless they are subject to a prior agreement governing their ownership. In all cases the University shall have a non-exclusive, royalty-free, perpetual license to use, display, copy, distribute, and prepare derivative works of such materials for internal University use.

D. Using Copyrighted Materials: All creators shall be responsible for securing permissions or licenses from owners before reproducing, distributing, making a derivative work, or displaying copyrighted works. It should be assumed that any material being used is copyrighted unless permission is expressly granted within the material or it is clearly in the public domain. Whether a particular use constitutes "fair use" is determined by the standards of U.S. Copyright Law.

E. Commercialization: Agreements that grant to third parties the rights to commercially develop University owned copyrighted Intellectual Property including software and electronic courses are encouraged. The Office of Research and Sponsored Programs is responsible for negotiating licenses and other appropriate contractual arrangements on behalf of the University and in coordination with the creator.

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